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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 24, 1998

APPLICATION OF

TOLL ROAD INVESTORS

PARTNERSHIP, II, L.P.

CASE NO. PUF980025

For approval of refinancing

ORDER APPROVING REFINANCING

Before the Commission is the application of Toll Road Investors Partnership, II, L.P. ("the Partnership") for Commission review of its plan for refinancing debt incurred in the construction of the Dulles Greenway. The Partnership requests an order finding that the proposed refinancing raises no issues not resolved in prior Commission proceedings and that further Commission approval is unnecessary. In the alternative, the Partnership asks that the Commission approve the refinancing. As set out in this order, the Commission finds that it has jurisdiction to approve the refinancing, and we grant approval.

In our Order Directing Notice and Authorizing Comments of October 9, 1998, we directed the Partnership to serve copies of its application on various public officials and to publish notice in newspapers circulating in the area served by the Dulles Greenway. On November 12, 1998, the Partnership filed

its "Proof of Notice and Service" stating that it had complied with these requirements. The Commission finds that appropriate notice of the application was given.

In our order of October 9, 1998, the Commission authorized interested individuals and government agencies to file comments on the refinancing proposal by November 16, 1998. No comments were received.

The Commission also directed its Staff to review the application and file a report. In its report filed November 19, 1998, the Staff related the history of the Dulles Greenway and noted that the Partnership was in default on various loans and notes. The Partnership intends to take advantage of current lower interest rates to issue approximately \$360 million in new debt. The Partnership plans to secure credit enhancements for this debt through a financial surety who is expected to assume some risk for future payments of interest and repayment of principal. Most of the new debt would be in the form of discounted "zero coupon" bonds which reduce debt service and allow build up of cash over the next few years. The Staff concluded that the proposed refinancing was in the public interest and did not appear to conflict with any provision of law. The Staff recommended approval of the refinancing.

As authorized by our order of October 9, 1998, the Partnership filed on November 23, 1998, comments on the Staff

Report. The Partnership agreed with the Staff's overall analysis and urged approval of the refinancing. The Partnership did note in its comments that the Staff's analysis of an aspect of the refinancing, a reduction in the equity level of the reinvested earnings account ("REA"), is incorrect. The refinancing will make no changes to the REA's equity level. In a supplement to its Report filed November 23, 1998, Staff agreed that the refinancing would not alter the equity position, and the Staff continued to recommend approval of the refinancing.

The Partnership holds a certificate of authority granted by the Commission in our Case No. PUA900013, Application of Toll Road Corporation of Virginia, pursuant to authority conferred by the Virginia Highway Corporation Act of 1988, §§ 56-535 through 56-552 of the Code of Virginia. The Highway Corporation Act, § 56-551 of the Code of Virginia, expressly addresses refinancing only in conjunction with modifying the termination date of the certificate of authority. The Partnership's certificate terminates on April 2, 2036, and this application proposes no modification or extension of that date even though the replacement debt may have a maturity date later than that of the current debt. The Commission is empowered, however, to regulate an operator, in this case the Partnership, as a public service corporation and to supervise and control the operator in the performance of its duties. §§ 56-542, 56-543 A 3 of the

Code of Virginia. Refinancing could certainly bear on the ability of an operator to perform its public duties, and the Commission finds that refinancing is subject to our approval. As in Case No. PUA900013, we will apply a general public interest standard with attention to safeguards against default.

The Partnership is now in default on various financial obligations. If successful, the refinancing would allow the Partnership to cure its default and provide an opportunity to put the Dulles Greenway on a sounder financial footing. An improved financial position would foster uninterrupted operation of the project. Accordingly, the proposal is in the public interest.

The certificate of authority issued to the Partnership in Case No. PUA900013 authorized the establishment of a reinvested earnings account upon which a fair return would be earned. The reinvested earnings account was established in recognition of the negative cash flows from tolls, which was anticipated during the early years of operation. A rate of return was also prescribed. Opinion and Final Order, 1990 Ann. Rep. 197, 199, *as modified*, Order Amending Certificate, 1991 Ann. Rep. 208, 209. In this application, the Partnership does not propose to modify the return on equity previously approved, and the function of the reinvested earnings account will not change.

The Partnership stated in its application that its membership will change as a result of a successful refinancing. We will require the Partnership to report to the Commission on its new composition and on the terms and conditions of the refinancing.

Our finding that the proposed refinancing is in the public interest should not be interpreted as Commission approval of the particular securities the Partnership proposes to issue. Commission approval pursuant to the Virginia Highway Corporation Act is independent of, and in addition to, any other approval required under state and federal law before any securities may be issued. The Commission assumes that the Partnership will secure all required approvals. Likewise, our approval of the refinancing plan is not a guarantee of repayment of principal or payment of interest on any securities or an extension of the credit of the Commonwealth or any of its political subdivisions.

The Partnership does not seek in this application any revision in its schedule of rates and charges for use of the Dulles Greenway. Commission approval of this refinancing does not guarantee any particular level of tolls or toll structure. Tolls and other fees or charges for use of the roadway will be established and revised as provided by law. Accordingly,

IT IS ORDERED THAT:

(1) As provided by the Virginia Highway Corporation Act of 1998, §§ 56-535 through 56-552 of the Code of Virginia, and Title 56 of the Code of Virginia, the application for approval of refinancing is granted.

(2) Within sixty (60) days of the closing of the refinancing, the Partnership shall file with the Clerk of the Commission a report of the full details of the refinancing, including the terms of all obligations, and of the composition of the Partnership, including information on the corporate structure and business of any newly admitted partners.

(3) The Partnership shall continue to file all reports with the Commission's Divisions of Economics and Finance and Public Utility Accounting as previously ordered.

(4) This matter be continued until further order of the Commission.